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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of:)

Implementation of the Telecommunication Act of 1996:)

CC Docket No. 96-152

Telemessaging, Electronic Publishing and Alarm)
Monitoring Services)

**REPLY COMMENTS
OF THE
UNITED STATES TELEPHONE ASSOCIATION**

Its Attorneys:

Mary McDermott
Linda Kent
Charles D. Cosson
Keith Townsend

Porter Childers
Executive Director
Legal and Regulatory Affairs

1401 H Street, NW, Suite 600
Washington, D.C. 20005
(202) 326-7248

September 20, 1996

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SUMMARY

The Commission should reject the suggestions of commenting parties that would impose unnecessary regulation on local exchange carriers. Such suggestions are superfluous given the clear language of the Act and are contrary to the pro-competitive intent of the Act. Most of these suggestions are obvious attempts by competitors to extend their competitive advantage since such regulations would not be applied to them.

For example, Voice-Tel's proposals regarding LEC provision of telemessaging service are beyond the scope of Section 260 and should not be considered. In addition, the enforcement proposals of Voice-Tel, AICC and ATSI will only serve to relieve complainants of any requirement to support complaints thereby encouraging an overwhelming number of unsubstantiated complaints.

Finally, USTA supports the clarification of the definition of intraLATA telemessaging as explained by U S WEST.

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The United States Telephone Association (USTA) respectfully submits its reply to the comments filed September 4, 1996 in the above-referenced proceeding.

In its comments, USTA recommended that the Commission refrain from exceeding its authority and imposing regulation where none was anticipated by the 1996 Act. USTA urges the Commission to reject the suggestions of parties which would add unnecessary regulation on local exchange carriers (LECs). USTA discusses some of those comments in its reply.

I. THERE IS NO NEED FOR FURTHER REGULATIONS TO IMPLEMENT SECTION 260 OF THE 1996 ACT.

Detailed rules beyond what are contained in Section 260 of the Telecommunications Act of 1996 are not required. The requirements of Section 260 are

sufficient, and prohibit improper cross-subsidization and unreasonable discrimination. The extensive list of additional regulations that Voice-Tel suggests imposing on all LECs offering telemessaging services is an example of the extremes that a competitor will go to in an attempt to extend its current competitive advantage since it would not be subject to such rules and to impede fair and efficient competition.¹

Voice-Tel's proposals regarding LEC marketing of its telemessaging service, marketing of competitors' services, and advertising restrictions on telemessaging service are beyond the scope of Section 260 and should not be considered. Section 260 imposes a specific nondiscrimination safeguard to protect competitors' equal access to network services. It does not require LECs to offer other services to telemessaging competitors. Section 260(a)(2) clearly states that a LEC "shall not prefer or discriminate in favor of its telemessaging service operations in its provision of telecommunications services." There is no requirement for LECs to offer competitors like Voice-Tel their marketing expertise. Such a result is contrary to the pro-competitive intent of Congress.

In addition, Voice-Tel calls for the "establishment of a separate affiliate for all incumbent LECs".² Nothing in Section 260 requires LECs to offer telemessaging through a separate subsidiary. Many LECs today offer telemessaging services on an integrated basis, without evidence of cross-subsidization. Again, Voice-Tel is merely trying to extend its

¹Voice-Tel Comments, p.10-11.

²Voice-Tel Comments, p.11.

competitive advantage.

Voice-Tel and ATSI assert that collocation must be made available to telemessaging providers.³ Physical collocation by LECs of competitor equipment is a requirement of Section 251 of the 1996 Act, and applies only to telecommunications carriers, not to information service providers or enhanced service providers. In addition, the Commission in its recent Interconnection Order reaffirmed that collocation of enhanced service equipment is unnecessary for interconnection and should not be required.⁴ Voice-Tel's and ATSI's assertions should be soundly rejected.

II. DEFINITION OF INTRALATA TELEMESSAGING

USTA supports the clarification of the definition of intraLATA telemessaging as explained by U S WEST.⁵ An information service should be considered to be an interLATA information service only when the service integrates the interLATA transmission component between the service provider and the end user and the transmission component is provided by the BOC as one of the integrated bundled components of the information service. If an information service is offered on a stand-alone basis, without an

³Voice-Tel Comments, p.5 and Association of Telemessaging Services International, Inc. ("ATSI") Comments, p.7.

⁴Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, CC Docket No. 96-98, released August 8, 1996 at para. 581.

⁵U S WEST Comments, p.32.

integrated interLATA transmission component, the service is fundamentally intraLATA or local in nature, even if the service can be accessed by the end user from another LATA.

III. ENFORCEMENT ISSUES

The proposals of Voice-Tel, AICC and ATSI regarding enforcement will only serve to generate an overwhelming number of unsubstantiated complaints. These suggestions also would relieve complainants of showing that the alleged violation will "...result in material financial harm to a provider of telemessaging service" as required in Section 260(b) or "...result in material financial harm to a provider of alarm monitoring service as required by Section 275(c). Such showings are a precondition to receiving expedited consideration. The proposals are contrary to the Act and should be rejected.

AICC suggests that the concept of 'material financial harm' must include non-quantifiable harm and that merely an allegation of discrimination or denial of a necessary service constitutes material financial harm.⁶ AICC then states that once this prima facie case is established (without any quantification of any harm, only an allegation), "the Commission must order the defendant LEC 'to cease engaging' in the disputed activity" and "...may issue remedial orders including... orders of revocation".⁷ This proposal would shift the burden of proof to defendants upon a mere allegation of discrimination and material

⁶AICC Comments, p. 31.

⁷Id. p. 32.

financial harm, without any need for the complainants to proffer even a scintilla of proof. Such a proposal would turn the complaint process on its head and result in a deluge of frivolous, unsupported and unsupportable complaints.

ATSI also proposes that anything that could possibly result in financial harm, even if that alleged harm cannot be quantified, is sufficient to render a complaint valid.⁸ Such a vague standard does not come close to meeting the statutory requirement.

Voice-Tel similarly urges the Commission not to require specific showings of loss of business.⁹ Voice-Tel wants to be relieved of any obligation to demonstrate financial harm by providing information from its own records, but would rather force the defendant to quantify that the complainant would not suffer financial harm based upon information that is solely in the complainant's possession.

These proposals show that the effect of shifting the burden of proof would be an open invitation to frivolous, undocumented complaints that would over-burden the Commission and the defendants. The Commission should, instead, adopt procedures designed to expedite the complaint process by ensuring that complaints, answers and all other filings are complete and fully documented. This will avoid the need for extensive discovery and could allow summary action.

⁸ATSI Comments, pp.9,11.

⁹Voice-Tel Comments, p.13.

IV. CONCLUSION.

In achieving the clear purposes of the Telecommunications Act of 1996, the Commission must refrain from adding to restrictions mandated in the Act or embellishing upon the safeguards contained in the Act.

Respectfully submitted,

UNITED STATES TELEPHONE ASSOCIATION

By:  _____

Its Attorneys:

Mary McDermott
Linda Kent
Charles D. Cosson
Keith Townsend

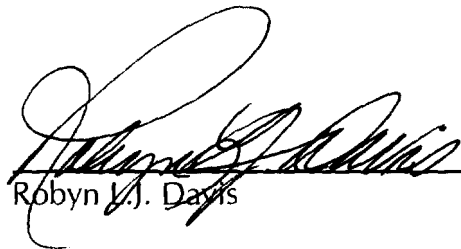
Porter Childers
Executive Director
Legal and Regulatory Affairs

1401 H Street, NW, Suite 600
Washington, D.C. 20005
(202) 326-7248

September 20, 1996

CERTIFICATE OF SERVICE

I, Robyn L.J. Davis, do certify that on September 20, 1996 reply comments of the United States Telephone Association were either hand-delivered, or deposited in the U.S. Mail, first-class, postage prepaid to the persons on the attached service list.



Robyn L.J. Davis

Lawrence W. Katz
Jodi B. Brenner
Bell Atlantic Telephone Companies
1320 North Courthouse Road
Eighth Floor
Arlington, VA 22201

Kathryn Marie Krause
John Taylor
U S WEST
1020 19th Street, NW
Suite 700
Washington, DC 20036

Patricia L. C. Mahoney
Jeffrey B. Thomas
140 New Montgomery Street - Room 1530A
San Francisco, CA 94105

Maureen O. Helmer
New York State Dept. Of Public Services
Three Empire State Plaza
Albany, NY 12223

Albert Halprin
Joel Bernstein
Halprin, Temple, Goodman & Sugrue
1100 New York Avenue
Suite 650 - East Tower
Washington, DC 20005

Frank Michael Panek
Richard Hetke
Ameritech
2000 West Ameritech Center Dr. - Room 4H84
Hoffman Estates, IL 60196

M. Robert Sutherland
A. Kirven Gilbert III
BellSouth
1155 Peachtree St., NE
Suite 700
Atlanta, GA 30309

David S. J. Brown
Newspaper Association of America
529 14th Street, NW
Suite 440
Washington, DC 20045

Marlin D. Ard
Lucille M. Mates
Pacific Telesis Group
140 New Montgomery Street - Room 1530A
San Francisco, CA 94105

Peter Arth, Jr.
Edward W. O'Neill
Patrick S. Berdge
State of California and PUC of California
505 Van Ness Avenue
San Francisco, CA 94102

Ruth S. Baker-Battist
5600 Wisconsin Avenue
Suite 1007
Chevy Chase, MD 20815

Randall Cook
Halprin, Temple, Goodman & Sugrue
1100 New York Avenue
Suite 650 - East Tower
Washington, DC 20005

Daniel Iannotti
Stephen Schulson
Ameritech
2000 West Ameritech Center Dr. - Room 4H84
Hoffman Estates, IL 60196

James D. Ellis
Robert M. Lynch
David F. Brown
SBC Communications, Inc.
175 E. Houston - Room 1254
San Antonio, TX 78205

Durward D. Dupre
Michael J. Zpevak
Robert J. Gryzmala
Southwestern Bell Telephone Co.
One Bell Center - Room 3520
St. Louis, MO 63101

John F. Natoli
NYNEX Corporation
35 Village Road
Middleton, MA 01949

Frank W. Krogh
Donald J. Elardo
MCI
1801 Pennsylvania Avenue, NW
Washington, DC 20006

Michael G. Jones
Gunnar D. Hailey
Willkie Farr & Gallagher
Three Lafayette Centre - 1155 21st Street, NW
Washington, DC 20036

Frank Moore
Smith, Bucklin & Associates, Inc.
1200 19th Street, NW
Washington, DC 20036

Lawrence W. Katz
Bell Atlantic
1320 North Court House Road
Eighth Floor
Arlington, VA 22201

Mark C. Rosenblum
Ava B. Kleinman
AT&T
295 North Maple Avenue
Room 324511
Basking Ridge, NJ 07920

Brian Conboy
Sue D. Blumenfield
Willkie Farr & Gallagher
Three Lafayette Centre - 1155 21st Street, NW
Washington, DC 20036

Danny E. Adams
Steven A. Augustino
John J. Heitmann
Kelley Drye & Warren, LLP
1200 19th Street, NW
Washington, DC 20036